No. 79-6853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

vs.

JAMES THOMAS WEBB,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

BRIEF AMICI CURIAE FOR THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS ON BEHALF OF THE RESPONDENT

JOHN C. DEACON
President, National Conference of Commissioners on Uniform State Laws
P. O. Box 1245
Jonesboro, Arkansas 72401
(501) 932-6694

JOHN M. MCCABE
Legal Counsel, National Conference of Commissioners on Uniform State Laws
645 North Michigan Avenue
Chicago, Illinois 60611
(312) 321-9710

Amici Curiae

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QUESTIONS PRESENTED.

I. Does Article IV, Section 1 of the United States Constitution require that full faith and credit be given to a Florida judgment, purporting to enforce, in part, and modify, in part, a Georgia child custody decree, when:

(1) to do so would conflict with the provisions of the Uniform Child Custody Jurisdiction Act, the controlling law in both Florida and Georgia;

(2) the Florida court acted without subject matter jurisdiction;

(3) the Florida judgment violated the policies and statutes of the State of Georgia; and

(4) the question of changed circumstances in the condition of the parties was not res judicata in Florida?

II. Does Florida jurisdiction over the Respondent, who is not a resident or domiciliary of Florida, who entered Florida one time to retrieve his child back to Georgia, who was served with process in Georgia, and who never appeared in the Florida litigation, depend upon Florida's capacity to take personal jurisdiction over him under *May* v. *Anderson*, 345 U.S. 529, or upon his single visit to take his child as a "minimum contact" with the forum, or upon the terms of the Uniform Child Custody Jurisdiction Act?

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INTEREST OF THE AMICI CURIAE

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is a national organization of the legal profession and of state government, which is dedicated to the principle of uniformity in state law in those subject areas of the law for which the policy of uniformity overcomes individual state interests. As the institution of state government so designated and supported by the many states for this purpose, the NCCUSL completed the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968. The UCCJA has been adopted in 44 states, including the states in which the parties to this action reside and litigated their dispute. The UCCJA provided the statutory framework under which both the Florida and Georgia

courts acted. The NCCUSL is the only institution in the U.S. which can provide this Court with the national perspective on child custody matters and the UCCJA. In addition, any ruling by this Court will have substantial effect upon further adoptions of the UCCJA in the remainder of the states, and may influence, materially, the policies the UCCJA purports to serve. The NCCUSL, its President, and its Legal Counsel have obtained the consent of the parties to file as Amici Curiae.

SUMMARY OF THE ARGUMENT

I. If this Court grants full faith and credit to the Final Judgment of the Circuit Court of Alachua County, Florida, its decision will conflict with the Uniform Child Custody Jurisdiction Act (UCCJA), which is the controlling law in Florida, Georgia, and 42 other states. The UCCJA was promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to combat chronic problems in interstate child custody disputes, problems exacerbated by prior rulings of this Court.

However, the Florida court acted without jurisdiction over the subject matter, under Sections 14 and 15 of the UCCJA. The initial decree was a Georgia decree. Efforts by the Florida court, under Section 15, to enforce the Georgia decree could not, under the terms of the UCCJA, confer jurisdiction on the Florida court. Further, the Florida court's effort to modify the Respondent's visitation rights was attempted without jurisdiction, under Section 14 of the UCCJA. Under Section 14, if Georgia retained a basis for jurisdiction, Florida could not take jurisdiction to modify the Georgia decree. Georgia retained a basis for jurisdiction. Georgia need not give full faith and credit to any judgment made without jurisdiction over the subject matter, when jurisdiction was not "fully and fairly" litigated in the Florida court, under *Durfee* v. *Duke,* 375 U.S. 106. Therefore, the Georgia court could, and did, properly deny full faith and credit to the Florida court's Final Judgment.

Further, if the judgment of the Florida court violates the statutes and policies of Georgia, Georgia need not extend full faith and credit to it, under *Nevada* v. *Hall,* 99 S. Ct. 1182. Georgia has adopted the UCCJA and its policies. The Florida court acted in a fashion contrary to the provisions of the UCCJA. The Georgia courts could, therefore, deny full faith and credit to the Final Judgment of the Florida court.

In addition, under *New York ex rel Halvey* v. *Halvey,* 330 U.S. 610, what Florida may do with child custody matters, Georgia may do, under Article IV, Section 1 of the *U.S. Constitution* and 28 U.S.C. 1738. The substantive rule for modification of child custody decrees in Florida requires a finding of changed circumstances in the condition of the parties. The issue of changed circumstances is res judicata, in Florida, if fully and fairly litigated. But the Florida court, on the face of its Final Judgment, failed to consider changed circumstances. Therefore, the issue was not res judicata, and could be considered in Georgia. The Georgia courts found changed circumstances which called for transferring custody to the Respondent.

II. Even though the Florida court acted without subject matter jurisdiction, it should not be denied jurisdiction because the Respondent was not served in Florida and was not a resident of Florida. Further, jurisdiction over the Respondent should not be based on his one entry into the State of Florida to pick up his child. Under *May* v. *Anderson,* 345 U.S. 528, this Court denied full faith and credit to a Wisconsin child custody decree in the State of Ohio, because Wisconsin did not have personal jurisdiction over the Ohio parent. This case should now be reconsidered on the basis of *Shaffer* v. *Heitner,* 433 U.S. 186, and cases subsequent to it, which authorize jurisdiction upon factors of contact between the parties, the forum, and the litigation. The basic principle is the "traditional notions of fair play and justice" under the 14th Amendment to the *Constitution of the United States.* The UCCJA, which determined jurisdiction in Florida, provides a fair balance of these

factors, and meets the tests demanded under the 14th Amendment. Since the Florida court took jurisdiction over the person of the Respondent, under the UCCJA, jurisdiction over his person should be upheld.

Further, cases since *International Shoe* v. *Washington,* 326 U.S. 310 (1945), have encouraged more transitory bases for jurisdiction. At the same time, this Court has recognized the right of states to adjudicate matters in their courts. If this Court allows Florida's jurisdiction over the person of the Respondent to be based on his single act of taking his child from Florida to Georgia, it shall encourage actions too transitory to be in the best interests of children, and shall deprive the states of their rights to adjudicate the disputes of their citizens. The UCCJA provides a stable balance between these contending requirements, and meets the best interests of children at the same time.

This Court should allow the Georgia decision to stand, because Florida has no subject matter jurisdiction, based on its effort to enforce and to modify the Georgia decree. It should reject, as finally overruled, the case of *May* v. *Anderson.* It should, also, permit the UCCJA to be the controlling law as the best solution to the needs of litigants and the individual states.

ARGUMENT

I.

GEORGIA NEED NOT GIVE FULL FAITH AND CREDIT TO THE FINAL JUDGMENT OF THE CIRCUIT COURT OF ALACHUA COUNTY, FLORIDA, UNDER ARTICLE IV, SECTION 1 OF THE CONSTITUTION OF THE UNITED STATES AND 28 U.S.C. 1738, FOR THE FOLLOWING REASONS:

A. If the Final Judgment of the Circuit Court of Alachua County, Florida, receives full faith and credit, it will virtually nullify the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA) which rule jurisdiction over child custody matters in both states.

The Amici Curiae assert that this Court should not give full faith and credit to the Final Judgment of the Circuit Court of Alachua County, Florida, as Petitioner requests. To do so will most probably bring Article IV, Section 1 of the *Constitution of the United States* into conflict with the Uniform Child Custody Jurisdiction Act (UCCJA), the controlling law in Georgia and Florida.[1] This result would be very unfortunate, since 42 other states have joined Florida and Georgia in enacting this important Uniform Act.[2] If full faith and credit cannot be reconciled with the UCCJA, an enormous effort to end the chronic chaos in interstate child custody disputes will most certainly fail. For the

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[1] National Conference of Commissioners on Uniform State Laws (NCCUSL), *Uniform Child Custody Jurisdiction Act* (1968) (See: Appendix); West's F.S.A. §§ 61.1302 to 61.1348; Ga. Code 74-501 to 74-525.

[2] These states, from the official records of the NCCUSL, are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

Court to rule, adequately, the Amici Curiae respectfully offer some background remarks.

Webb v. *Webb* does not represent a normal child-snatching situation. The facts indicate that the Respondent did not enter Florida to take his child until he was contacted by Florida authorities. There may even be some color of authority in his assumption of the child's custody. He found his child without immediate adult supervision, and the Superior Court in Berrien County, Georgia, the only court to conduct a complete proceeding in this matter, found the child abandoned, in fact.[3] That Court also found other circumstances, such as the Petitioner's transience, which bore upon its decision to give the Respondent custody. She had moved six times, for example, in a two-year period.[4]

The usual child-snatching involves a parent or person acting as parent who flees from the initial forum to a foreign forum because he or she knows that a foreign forum may be more congenial to his or her interests. The Respondent returned to the initial forum. He, then, litigated custody in that forum. His actions do not indicate anything more than a real concern for the best interests of the child, found in a disturbing situation.

It is also important to note that taking the child in no way created jurisdiction in Georgia. The old rules for taking jurisdiction on the mere presence of the child do not apply in either Georgia or Florida. The UCCJA controls, a factor not before this Court in its four prior child custody cases.[5] The

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[3] Order, *Webb* v. *Webb*, No. 79-C-43, Super. Ct., Berrien County, Ga., June 21, 1979.

[4] *Ibid.*

[5] *New York ex rel Halvey* v. *Halvey*, 330 U. S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947); *May* v. *Anderson*, 345 U. S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953); *Kovacs* v. *Brewer*, 356 U. S. 604, 78 S. Ct. 963, 2 L. Ed. 2d 1008 (1958); *Ford* v. *Ford*, 371 U. S. 187, 83 S. Ct. 273, 9 L. Ed. 2d 240 (1962).

Amici Curiae assert that Georgia properly had jurisdiction over the modification of the initial decree under the strict terms of the UCCJA. Further, the UCCJA protects children from multi-state conflict if it is properly applied. This Court should be aware of its general effect on interstate child custody disputes to understand this fact.

Section 3 of the UCCJA provides four bases by which an enacting state may take jurisdiction over child custody matters.[6] Generally, initial jurisdiction may be taken when a state is the home state of the child, or a former home state with which substantial contacts remain. Once a state with UCCJA jurisdiction initiates a proceeding, Section 6 instructs sister UCCJA states to refrain from proceeding.[7] Once a decree has been entered, Section 13 provides for its enforcement in sister UCCJA states.[8] Section 14 limits modification in sister UCCJA states. Section 14 may be the most critical section in the entire Act. A state may not modify a decree of another state unless "it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify . . ."[9] The major effect of the UCCJA is simply to protect jurisdiction in the initial forum, thereby eliminating the incentive to seize and run. If the initial forum's basis for jurisdiction terminates, then only a state with appropriate jurisdiction under Section 3 may proceed to modify. These careful limitations upon modification are the basic protections for children. Coupled with the other provisions in the UCCJA for interstate cooperation between courts, they provide a complete, organic set of rules for the fair adjudication of child custody disputes.

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[6] West's F. S. A. 61.1308; Ga. Code 74-504.
[7] West's F. S. A. 61.1314; Ga. Code 74-507.
[8] West's F. S. A. 61.1328; Ga. Code 74-514.
[9] West's F.S.A. 61.1329; Ga. Code 74-515.

The UCCJA was created because full faith and credit has not been an adequate source of remedy for interstate child custody disputes. All commentators agree that the four prior cases which this Court has decided have fueled these disputes under the guise of full faith and credit.[10] The best estimates of actual child-snatching, which pre-UCCJA law literally encouraged, indicate that between 25,000 and 100,000 of these cases take place each year.[11] Desperately in need of some remedy, the states resorted to inherent powers under principles of comity to resolve their difficulties.

The genius of the federal system lies in its capacity to create a remedy at one level of government, when it cannot be obtained at another. As to comity between states, this Court said in *Milwaukee County* v. *White,* 296 U.S. 268, 272, 80 L.Ed. 220, 56 S.Ct. 229 (1935), "A state court, in conformity to state policy, may, by comity, give a remedy which full faith and credit does not compel." More recently, this Court said, in *Nevada* v. *Hall,* 99 S.Ct. 1182, 1191:

> Indeed, in view of the Tenth Amendment's reminder that powers not delegated to the Federal Government nor prohibited to the States are reserved to the people, the existence of express limitations on state sovereignty may

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[10] See: Ehrenzweig, "Interstate Recognition of Custody Decrees", 51 Mich. L.Rev. 345 (1953), revised in *Selected Readings on Conflict of Laws* 822 (Culp. Ed. 1956); Ratner, "Child Custody in the Federal System," 62 Mich. L.Rev. 795 (1964); Ehrenzweig, "The Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings," 64 Mich. L.Rev. 1 (1965); Clark, *The Law of Domestic Relations* 323 to 326 (1968); Hazard, "May v. Anderson, Preamble to Family Law Chaos," 45 Va. L.Rev. 379; Bodenheimer, "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws," 22 Vanderbilt L.Rev. 1207 (1969).

[11] Joint Hearing, Subcommittee on Criminal Justice of the Committee on the Judiciary and the Subcommittee on Child and Human Development of the Committee on Labor and Human Resources of the U.S. Senate, *Parental Kidnapping Prevention Act of 1975,* S. 105, U.S. Senate, 96th Congress, at page 10 (January 30, 1980).

> equally imply that caution should be exercised before concluding that unstated limitations on state power were intended by the framers. [See, also, *Bank of Augusta* v. *Earle,* 13 Peters. 519, 590; 10 L.Ed. 274 (1839).]

It has been this Court's position, therefore, to presume comity, and the UCCJA was created in reliance upon these principles.

Given the massive state effort, through the UCCJA, to solve interstate child custody problems, it would be an ironic result for the states to find full faith and credit, once again, against them. A strict interpretation of the UCCJA would limit modification jurisdiction to Georgia. To require Georgia to give full faith and credit to Florida would defeat that limitation. Modification would once again become easier from state to state. Child custody matters would once again be in turmoil on a national scale. Therefore, the Amici Curiae most respectfully urge that full faith and credit not be given to the Final Judgment of the Circuit Court of Alachua County for the reasons which follow.

B. Florida's action to take jurisdiction under Section 15 of the UCCJA (West's F.S.A. 61.1332) fails because Section 15 only provides for enforcement of out-of-state decrees, does not confer subject matter jurisdiction upon Florida courts, and does not "domesticate" out-of-state decrees.

The Petitioner, upon the removal of the child, filed the Georgia decree with the Florida court, pursuant to Section 15 of the UCCJA.[12] She, then, petitioned the Florida court to modify the Georgia decree, which the Florida court did to the extent of particularizing the Respondent's visitation rights.[13] It is Petitioner's contention, in her Petition for Certiorari, that the order

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[12] Petition *Webb* v. *Webb,* No. 79-569-CA, Cir. Ct., Alachua County, Fla., March 2, 1979.

[13] *Ibid.*

of the Florida court domesticated the decree in Florida and robbed Georgia of all power to reconsider its own decision.[14]

So far as the Amici Curiae are concerned, this theory derives no substance from the statutory provisions alleged to be its basis. Petitioner can cite no case law to support this contention, and it directly contradicts the intent of the drafters of the UCCJA.

Section 15 of the UCCJA permits the filing of a "certified copy of a custody decree of another state" in the appropriate clerk of court's office.[15] The filing facilitates the enforcement requirement of Section 13 of the UCCJA. Under Section 13, "the courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction . . ."[16] The official Comment to Section 13 notes: "This section and Sections 14 and 15 are the key provisions which guarantee a measure of security and stability of environment to the 'interstate child' by discouraging relitigation in other states."[17] It is clear that these Sections are to be read together.

Section 15(a) of the UCCJA facilitates the enforcement of decrees of the courts of other states in this fashion: "A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State."[18]

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[14] Final Judgment *Webb* v. *Webb,* No. 79-569-CA, Cir. Ct., Alachua County, Fla., April 18, 1979. The Judgment states: "1. That certain Final Decree of Divorce entered by the Superior Court, Berrien County, Ga., Case No. 77-D-69, dated September 22, 1977, and filed with this Court, is hereby established as if it were a judgment of the Court." Petitioner's theory on domestication, as the basis for Florida jurisdiction, is stated in the Petition for Writ of Certiorari, *Webb* v. *Webb,* S. Ct. of the United States, at page 2.

[15] West's F.S.A. 61.1332; Ga. Code 74-516.

[16] West's F.S.A. and Ga. Code *supra* note 8.

[17] NCCUSL *supra* note 1, at page 20.

[18] West's F.S.A.; Ga. Code *supra* note 15.

This means that methods of enforcement available, whether that be habeas corpus, contempt powers, or the services of the local sheriff under an appropriate order, to a domestic decree are available to an out-of-state decree recognized and enforceable under Section 13. Note the Comment to Section 15: "Out-of-state custody decrees which are required to be recognized are enforced by other states. See Section 13. Subsection (a) provides a simplified and speedy method of enforcement . . . *The Authority to enforce an out-of-state decree does not include the power to modify it.*"[19]

The Petitioner's theory of domestication, as it rests on these Sections, is an odd one. The plain language of Sections 13 and 15 clearly refers to recognition and enforcement of out-of-state decrees. The language says or does nothing to convert the Georgia decree to a Florida decree. There is nothing in the official commentary to support the notion of domestication. The Georgia decree remains a Georgia decree.

Section 15 was derived from similar provisions in the Uniform Enforcement of Foreign Judgments Act and the Uniform Reciprocal Enforcement of Support Act (URESA).[20] Cases decided under these two Acts tend to regard filing as a "ministerial act," and enforcement proceedings as "proceedings supplemental" to the main proceeding.[21] It only remains to note, under the UCCJA, that enforcement requires no jurisdiction under Section 3. Section 3 applies to "initial or modification" decrees. And the principal proceeding is always a proceeding for an "initial or modification" decree in child custody cases. Nothing supports the Petitioner's contention. Filing and enforcement do not convert an initial state's decree

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[19] NCCUSL *supra* note 1, at pages 22-23.

[20] NCCUSL, *Uniform Enforcement of Foreign Judgments Act* (1948), amended 1964; NCCUSL, *Uniform Reciprocal Enforcement of Support Act* (1951), amended 1958, 1968.

[21] See: *Pinner* v. *Pinner,* 234 S.E.2d 633, 636, 33 N.C. App. 204 (1977); *State ex rel Greebel* v. *Endsley,* Ind., 379 N.E.2d 440 (1978).

into a decree of an enforcing state, and no jurisdiction over this case can possibly be derived from actions taken under Section 15.

C. The Circuit Court of Alachua County, Florida, did not have subject matter jurisdiction over modification of the Georgia child custody decree, under Section 14 of the UCCJA (West's F.S.A. 61.133), and its Final Judgment is not entitled to full faith and credit.

It remains to examine the Florida court's effort to assume jurisdiction to modify the Georgia decree. Modification of decrees of other states is permitted, if at all, under Section 14. It should be remembered that a sister state's initial decrees are to be protected in the main. If a basis for jurisdiction continues in the initiating state, Section 14 prevents modification. If a sister state's jurisdiction has terminated, a court must then find that it has jurisdiction under Section 3. "The Act does make a state a child's home state if he or she has stayed there for six months. However, that provision has to be read in conjunction with Section 14 of the Act, which does not permit modifications by another state as long as the first state's exclusive jurisdiction continues."[22]

Florida should honor Georgia's decree, and refrain from modifying it, if Georgia jurisdiction remains under the UCCJA. But the Florida court did not make any effort, even, to inquire into jurisdiction in Georgia. If it had, it probably would have concluded that Georgia retained jurisdiction, under the UCCJA. The Petitioner concedes as much in her brief before the Georgia Supreme Court.[23] The Georgia trial court was able to find jurisdiction, after considering the evidence, on several bases.[24] The rule of law is not ambiguous. As long as Georgia

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[22] Fain, A.B.A. Family Law Section Institute, 5 Fam. L. Rptr. 2186 (1979).

[23] Appellant's Brief, *Webb* v. *Webb*, Sup. Ct., State of Ga., Case No. 35703, at page 14.

[24] Order, *supra* note 3.

had jurisdiction, the Florida court violated the Florida UCCJA when it modified the Georgia decree.

It is well settled that a court of one state need not give full faith and credit to the judgment of a sister state, taken without either jurisdiction over the subject matter or the person.[25] In *Webb* v. *Webb,* Florida lacked subject matter jurisdiction over modification of the Georgia decree. However, in *Durfee,* this Court stated:

> From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

Durfee seems fully applicable to the order of the Florida court.

Clearly, on its face, the Florida order lacked subject matter jurisdiction. There is nothing on the record to indicate that the Florida court's jurisdiction "had been fully and fairly litigated by the parties and finally decided." Since no issue was made of jurisdiction in Florida, the Georgia courts could consider the validity of Florida jurisdiction. The Georgia courts properly denied Petitioner's assertion that full faith and credit should be given to the Final Judgment of the Circuit Court of Alachua County.[26]

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[25] *Durfee* v. *Duke,* 375 U.S. 106, 110, 111; 84 S.Ct. 242, 11 L.Ed.2d 186 (1963).

[26] This Court cites ALI, Restatement, Conflict of Laws, § 451(2) in *Durfee.* This Section calls for honoring a court's jurisdictional determination "unless the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond jurisdiction." Here, clearly, is a case in which the policy underlying res judicata is outweighed by the policy against permitting the court to act beyond jurisdiction. If one state, under the UCCJA, cannot resist an improper taking of jurisdiction by another state, the effect of the Act is considerably diminished. *Webb* v. *Webb* would fall into several of the exceptions listed in § 451(2).

D. The Final Judgment of the Circuit Court of Alachua County, Florida, is not entitled to full faith and credit in Georgia because strong public policy in Georgia, as expressed in its enactment of the UCCJA (Ga. Code 74-501 to 74-525), would reject the notion that Florida had jurisdiction to modify the Georgia decree.

There are other doctrines pertaining to full faith and credit which the Amici Curiae argue would support the Georgia decision. The violation of the terms of the UCCJA should exempt the State of Georgia from giving full faith and credit to the Florida order. In the recent case of *Nevada* v. *Hall,* 99 S. Ct. 1182, 1189 (1979), this Court stated that Article IV, Section 1 of the *Constitution of the United States* does not require a state "to enforce even the judgment of another state" if it would violate its own policies or statutes.

Webb v. *Webb* involves two states which have adopted identical legislation, designed to curtail a specific problem—the proliferation of interstate child custody disputes. Both have adopted the policies expressed in Section 1 of the UCCJA.[27] Each state adopts the UCCJA, expecting to give the appropriate recognition to the decrees of sister states and to enforce them. It is a concomitant expectation that similar treatment be accorded their own custody decrees in other UCCJA states.

The UCCJA gives substance to these expectations in a variety of ways. In Section 6, a court of one enacting state must give way to the proceedings of a second state, even though jurisdiction may be found in the first state, so long as a proceeding in the second state has commenced, pursuant to appropriate jurisdiction under Section 3.[28] Under Section 6(b), each court subject to the UCCJA must scrutinize the pleadings and consult the child custody registry to look for pending proceedings. If it finds evidence of another proceeding, the court has to direct an inquiry to the state in which that

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[27] West's F.S.A. 61.1304; Ga. Code 74-502.

[28] West's F.S.A.; Ga. Code *supra* note 7.

proceeding is taking place. Even if a court does not find that a prior proceeding is taking place, it can direct litigants to a more convenient forum, under Section 7.[29] Under Section 8, a court may give way to another court if petitioners come to the first court with unclean hands.[30] This brief has already noted the strong restrictions on modification of out-of-state decrees, and the provisions which aid sister states in the enforcement of their decrees. The broad powers to communicate and cooperate interstate in Sections 18, 19, 20, 21 and 22, only, remain to be noted.[31] The potential for improved judicial relations, as well as improved handling of child custody matters, is unprecedented.

It follows that a state faced with judicial acts in a sister state, which fall short of the policies of the UCCJA, should not be required to give full faith and credit. Georgia should not be required to give full faith and credit to the Florida order.

E. Even if the Final Judgment of the Circuit Court of Alachua County, Florida, was made with subject matter jurisdiction, that would not preclude Georgia from modifying the decree, since change of circumstances was not litigated in Florida and, therefore, was not res judicata, and it could be considered in Georgia under the doctrines of *Halvey* v. *Halvey*, 330 U. S. 610 (1947).

Further, Georgia need not give full faith and credit to the Florida order, under the very specific rulings of *Halvey, Kovacs* and *Ford.*[32] Under the rule of *Halvey,* what Florida may do, Georgia may do. In Florida, the general rule for modification of child custody decrees is:[33]

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[29] West's F.S.A. 61.1316; Ga. Code 74-508.

[30] West's F.S.A. 61.1310; Ga. Code 74-509.

[31] West's F.S.A. 61.1338 to 61.1346; Ga. Code 74.519 to 74-523.

[32] *Halvey, Kovacs, Ford supra* note 5.

[33] *Sanders* v. *Sanders,* Fla. App. 376 So. 2d 880, 882 (1979). *Sanders* is the leading case in the appellate district which includes Alachua County.

> To warrant modification of a child custody award, there must be competent, substantial evidence that (1) there has been a substantial or material change in the condition of the parties and (2) that the best welfare of the child will be promoted by a change of custody.

This has been the rule, by the great weight of authority, at least since 1947.[34]

Florida regards as res judicata "all matters involved and known at the time of decree."[35] However, there is no indication from the record that change in the condition of the parties was, in fact, considered in the Florida court. The Petitioner's own complaint in the Florida court does not allege any change in the condition of the parties, nor does the order of the court indicate that change of circumstances influenced its order.[36] The order of the Florida court only finds "in the best interest of the child."[37] But Florida law distinctly requires an initial finding of changed circumstances.[38] Since the issue of changed circumstances was not considered in the Florida court and competent, substantial evidence was not heard, the matter cannot be res judicata in Florida. Under the rule of *Halvey,* there is nothing to preclude the Georgia court from considering the issue.

F. Conclusion.

If this Court grants full faith and credit to the Florida order, it will prove, once again, how difficult it is to relieve the plight of children caught up in custody disputes. Full faith and credit to the Florida order would negate the most important feature of the UCCJA—the restriction on modification. By the

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[34] *Belford* v. *Belford,* Sup. Ct. of Fla., Div. B, 32 So. 2d 312, 313 (1947); *Bennett* v. *Bennett,* Sup. Ct. of Fla., Div. B, 73 So. 2d 274, 278 (1954); *Avery* v. *Avery,* Fla. App. 314 So. 2d 198, 200 (1975); *Stricklin* v. *Stricklin,* Fla. App. 383 So. 2d 1183, 1184 (1980).

[35] *Belford supra,* at page 314; *Avery supra,* at page 200.

[36] Petition *supra* note 12; Final Judgment *supra* note 14.

[37] *Ibid.*

[38] *Sanders supra* note 33.

terms of the UCCJA, Florida has no jurisdiction to modify the Georgia decree. If the Florida order is upheld, Florida and other states would be able to modify out-of-state decrees, again, with impunity. The home state or substantial contacts restrictions in the UCCJA would prove only minor barriers if modification becomes possible. Such a decision would be a severe setback for those states which have passed the UCCJA.

This Court should, also, be aware that Congress has passed new legislation, signed by the President on December 28, 1980, which provides new perspective on full faith and credit for child custody decrees. Although not applicable in this case, the "Parental Kidnapping Prevention Act of 1980" accords with the UCCJA on modification of child custody decrees.[39] If another forum than the initial forum modifies a decree, the modification would receive full faith and credit only if the initial forum has declined or lost jurisdiction, exactly as the UCCJA requires. The new Act of Congress should encourage this Court to allow the UCCJA to rule between Georgia and Florida, and to deny full faith and credit to the Final Judgment of the Court of Alachua County, Florida.

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[39] 96th Congress, 2d Sess., H.R. 8406, § 8.

II.

EVEN THOUGH THE FINAL JUDGMENT OF THE CIRCUIT COURT, ALACHUA COUNTY, FLORIDA, IS NOT ENTITLED TO FULL FAITH AND CREDIT IN GEORGIA, IT SHOULD NOT BE DENIED FULL FAITH AND CREDIT BECAUSE THE FLORIDA COURT LACKED PERSONAL JURISDICTION OVER THE RESPONDENT.

A. Florida jurisdiction was based on Section 3(a)(1) and (2) of the UCCJA, and meets the requisite test of "traditional notions of fair play and justice" under the 14th Amendment of the *Constitution of the United States.*

In 1953, in *May* v. *Anderson,* 345 U.S. 528, this Court denied full faith and credit because a court in Wisconsin did not have personal jurisdiction over a parent in Ohio. *May* v. *Anderson* relied, principally, upon *Estin* v. *Estin,* 334 U.S. 541, 548, 92 L.Ed. 1561, 68 S.Ct. 1213 (1948) and *Krieger* v. *Krieger,* 334 U.S. 555, 92 L.Ed. 1572 (1948) for this proposition:[40]

> But we are aware of no power which the state of domicile of the debtor has to determine the personal rights of the creditor in the intangible unless the creditor has been personally served or appears in the proceeding.

If a parent can avoid personal service by leaving the jurisdiction, then he may forever keep the matter of the child's custody in doubt.

The problem that must be overcome is the problem of jurisdiction over the out-of-state parent. The UCCJA solves the problem in Section 12:[41]

> A custody decree rendered by a court of this State which had jurisdiction under Section 3 binds all parties who have

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[40] See, also, *Pennoyer* v. *Neff,* 95 U.S. 741, 24 L.Ed. 565 (1878).

[41] West's F.S.A. 61.1326; Ga. Code 74-513.

> been served in this State or notified in accordance with Section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

The Comment to Section 13 states:[42]

> This is in accord with a common interpretation of the inconclusive decision in *May* v. *Anderson.* Under this interpretation, a state is permitted to recognize a custody decree of another state, regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met.

The continuing life of *May,* however, has the effect of casting in doubt the entire validity of notice and service of process upon out-of-state litigants in child custody cases. The plurality opinion is not clear on its grounds. The UCCJA is drafted on the assumption that Justice Frankfurter's concurring opinion correctly interprets the plurality opinion:[43]

> What is decided—the only thing the Court decides—is the Full Faith and Credit Clause does not require Ohio, in disposing of the custody of children in Ohio, to accept, in the circumstances before us, the disposition made in Wisconsin. The Ohio Supreme Court felt itself so bound. The Court does not decide that Ohio would be precluded from recognizing, as a matter of local law, the disposition made by the Wisconsin court. For Ohio to give respect to the Wisconsin decree would not offend the Due Process Clause.

But the ambiguity of the case continues to plague child custody decisions in the states.

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[42] NCCUSL *supra* note 1, at page 20.

[43] *May supra* note 5, at pages 535, 536.

However, this Court has provided new perspective on interstate jurisdiction under the 14th Amendment to the *Constitution of the United States* in *Shaffer* v. *Heitner,* 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2869 (1977); *Kulko* v. *Super. Ct.,* 436 U.S. 84, 56 L.Ed.2d 132, 98 S.Ct. 1690 (1978); *Worldwide Volkswagen* v. *Woodson,* 100 S.Ct. 559 (1980); *Rush* v. *Savchuk,* 100 S.Ct. 571 (1980). These cases eliminate the artificial distinction between jurisdiction in personam and in rem, as created in *Pennoyer,* and rely upon principles of "traditional notions of fair play and substantial justice" as expressed, initially, in *International Shoe* v. *Washington,* 326 U.S. 310, 316, 90 L.Ed. 45, 66 S.Ct. 154 (1945).

Personal jurisdiction under these cases depends upon "minimum contacts" between the parties, the litigation, and the forum, and the capacity to give adequate notice to parties to an action.[44] It is "traditional notions of fair play and justice" which are key to determining proper jurisdictional tests, and flexibility among these factors is the expected result. For example, minimum contacts between the defendant and the forum are not an absolute prerequisite:[45]

> We do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudications of status, are inconsistent with the standards of fairness.

It is an interesting question whether Respondent's single act in taking the child from Florida to Georgia is an affiliating circumstance, a "minimum contact," which vests personal jurisdiction in Florida. This Court has been reluctant to allow a single transaction to be the basis for jurisdiction. In *International Shoe,* activities of the defendant were systematic and continuous.[46] In *Kulko,* the bare act of stopping in California to

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[44] *Shaffer* v. *Heitner,* 433 U.S. 186. See: Bodenheimer and Neeley-Kvarme, "Jurisdiction over Child Custody and Adoption After Shaffer and Kulko," 12 U.C.D. Law Rev. 229.

[45] *Shaffer supra,* at page 208.

[46] *International Shoe* v. *Washington,* 326 U.S. 310 (1945).

get married was not a sufficient affiliating circumstance to give California jurisdiction over the defendant in an action to modify support payments.[47] In *Rush*, the fact that the defendant's insurer was continuously present in a state did not, necessarily, give the state jurisdiction without other contact between the state and the litigation.[48] One contact, even if it involves taking a child, seems a thin basis for personal jurisdiction.

Of course, the Florida court took jurisdiction, as provided in the UCCJA.[49] The UCCJA bases jurisdiction primarily on the child's home state or former home state where significant contacts remain. Under the UCCJA, that would have been enough to give Florida initial jurisdiction, *if there had been no initial decree elsewhere, and modification jurisdiction, if Georgia had declined or lost jurisdiction.* This Court has not ruled that the presence of a child and a parent in one state gives jurisdiction over a parent in another state, there being no other contacts with the forum.[50]

However, child custody cases are unique. They resemble child support cases because provision must be made for modification subsequent to an initial decree. But child support cases concern only money.[51] Child custody cases concern the child's home and the security of his or her surroundings. *May* is, rightfully, criticized for treating children as property. Inanimate property is not concerned about its situs. Children are concerned about their homes, and must be recognized as persons. It is welcome to find in *Shaffer, Kulko, Worldwide Volkswagen* and *Rush* principles which can allow the recognition of the child as a person.

The Amici Curiae submit that the UCCJA meets the tests of "traditional notions of fair play and justice" and that it

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[47] *Kulko* v. *Super. Ct.*, 436 U.S. 84, 93 (1978).

[48] *Rush* v. *Savchuk*, 100 S.Ct. 571, 575 (1980).

[49] Final Judgment *supra* note 14.

[50] *Kulko supra* note 47.

[51] See Bodenheimer and Neeley-Kvarme *supra* note 44.

comports with the most stringent notions of due process under the 14th Amendment to the *Constitution of the United States.* Due process "depends rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws."[52] It requires a careful balancing of interests, of the relationship between the parties, the forum and the litigation.[53]

The forum state's interest in adjudicating the dispute is part of the analysis.[54] This Court has included "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering fundamental substantive social policies."[55] This Court should apply these principles and reject, once and for all, the ambiguities of *May* for the sounder principles of the UCCJA.

The focal point of the UCCJA is the child. It emphasizes the connection between the forum and the litigation. Section 3(a)(1) and (2) of the UCCJA is the relevant Section.[56] Jurisdiction depends, essentially, upon a finding that a state is the home state, or former home state, with which substantial contacts remain. Of course, jurisdiction requires adequate notice, and opportunity to appear on the part of the defendant.[57]

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[52] *Shaffer supra* note 44, at page 204.

[53] *Ibid.*

[54] *Worldwide Volkswagen* v. *Woodson,* 100 S.Ct. 559, 564 (1980).

[55] *Ibid.*

[56] The analysis is not extended to Section 3(a)(3) and (4) because these paragraphs are based on different factors and are not material to the assertions of the Petitioner. They are the emergency jurisdictional provisions. Section 3(a)(4) has no application, whatsoever, in this case. Section 3(a)(3) may have had a relevant basis, in Florida, if Florida had not already had a basis for jurisdiction in Section 3(a)(1) and (2).

[57] NCCUSL, *UCCJA,* §§ 4, 5; West's F.S.A. 61.131, 61.1312; Ga. Code 74-506, 74-507.

Section 3(a)(1) and (2) serves the best interests of children. Since a court with substantial evidence pertaining to a child's home will likely make the most informed decision concerning custody, it is in the best interests of the child to limit jurisdiction to those forums with that evidence. In most cases, Section 3(a)(1) and (2) will also accord with the convenience of parties. At least one party and the child will find the forum convenient. But, the need to decide the child's custody in a forum with substantial evidence concerning its home overrides some inconvenience to at least one party.

Section 3(a)(1) and (2) also serves the interests of the forum. The states have a clear interest in the welfare and care of children, as this Court has noted. That interest is strongest in the state which the child identifies as home, or which is a former home with which substantial contacts remain. Limiting jurisdiction over custody issues to those states which meet the requirements of Section 3(a)(1) and (2) of the UCCJA is a rational means for identifying and protecting individual state interests.

In addition, the UCCJA represents a specific interest of the interstate judicial system. No question has assailed state courts and litigants quite like the one of interstate child custody disputes. Limiting jurisdiction, as the UCCJA does in Section 3(a)(1) and (2), reduces conflict between state courts. The UCCJA, by its other sections, further limits the modification of out-of-state decrees, and requires their enforcement. It, also, mandates interstate communication between courts. The UCCJA offers states "the most efficient resolution of controversies."

Further, this Court has recognized that contact between the litigation and the forum should take precedence over contact between the defendant and the forum in certain instances. In *Rush,* the defendant's insurer was continously present, and doing business, in the forum state chosen by the plaintiff.[58] It is

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[58] *Rush supra* note 48.

unlikely that the defendant would have been inconvenienced, except as to the central choice of law question in the case, by defending in that forum state. Even then, litigating in the forum chosen by the plaintiff did not necessarily resolve the choice of law question in the plaintiff's favor. Yet, this Court rejected jurisdiction in the plaintiff's forum, because the forum did not have sufficient contact with *the litigation.*[59] One would assume that lack of evidence concerning issues to be litigated would be a principal reason for such a holding. This Court has, clearly, recognized the importance of contact between the forum and the litigation, and should give it strong weight in *Webb* v. *Webb,* as well.

To rule in favor of jurisdiction based on Section 3(a)(1) and (2) of the UCCJA is, also, in accord with this Court's position in *Stanley* v. *Illinois,* 405 U.S. 645, 657, 92 S.Ct. 1208, 31 L.Ed. 551 (1972), that "extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined .... The Illinois law .... provides for personal service, notice by certified mail, or notice by publication when personal or certified mail service cannot be held...."

May v. *Anderson* seems, clearly, outdated in the perspective of these cases and the UCCJA. It rests, solely on distinctions between in personam and in rem jurisdiction, and the rigid determinations of jurisdiction which *Pennoyer* v. *Neff* required. When these distinctions disappear, labeling rights in a child as personal rights, with incidents for the determination of jurisdiction, makes little sense. The question, now, is "fundamental fairness" for all parties. This Court should put aside *May* and turn to the broader perspectives of its rulings in *Shaffer, Kulko, Worldwide Volkswagen,* and *Rush.* At the same time, in the perspective of these cases, it must recognize the wisdom and balance of the UCCJA.

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[59] *Rush supra* note 48, at page 578.

B. If this Court adopts the position urged by the Petitioner—that the Respondent had sufficient "minimum contact" with the forum based on his taking of the child in Florida and transporting it into Georgia—it risks subjecting children to further forum shopping and child-snatching because of the transitory character of jurisdiction so established.

This Court has, clearly, in cases from *International Shoe* to *Rush,* provided for transitory actions in the U. S. At the same time, it has said that the sovereign integrity of the states shall be honored:[60]

> Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try cases in their courts.

The Amici Curiae assert that the UCCJA better balances these interests than a bare minimum contacts rule can.

People who separate and divorce often go to separate states during the period in which the marriage dissolves. The children are naturally part of the migration. Principles of jurisdiction must, in fact, take these migrations into account.

It would be a mistake, though, to compare transitory actions in the context of contract or tort litigation with child custody disputes. Transitory actions are allowed for "the plaintiff's interest in obtaining convenient and effective relief."[61] Minimum contacts, with defendants, rest, however, upon protection of defendants and their convenience "to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system," and so that defendants don't face "the burdens of litigating in a distant and inconvenient forum."[62]

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[60] *Worldwide Volkswagen supra* note 54.

[61] *Ibid.*

[62] *Ibid.*

These rules make sense for a local plaintiff dealing with a multi-state corporate defendant when the corporate defendant sends salesmen to deal with the plaintiff.[63] It would be hard to require a plaintiff to sue the defendant only at its situs. Many plaintiffs would be effectively cut off from a remedy. In tort actions, it seems fair to allow defendants, who are likely to be insured, to be sued where injury occurs or where the plaintiff is domiciled, providing that defendant and the litigation have some contact with the forum.

In child custody disputes, the relationship between plaintiff and defendant is quite different. Both are parents or persons acting as parents, often with co-equal rights of custody as they enter the litigation. The litigation considers harm to no one, nor compensation of any kind. It decides the right to custody of children, third persons in whose best interests the decision must be made. Indeed, children may have a guardian ad litem or individual legal counsel in many states, against the named plaintiff and defendant.[64] The litigation flows, not between the plaintiff and defendant, as named, but out to the child. The child's home is the gravamen of the action.

There is great risk and danger that emphasizing "minimum contacts" with defendants will ignore the child. Far from desiring more transitory actions for the convenience of plaintiffs, with some guarantee of affiliating circumstances to protect the defendant, the problem before this Court is litigation too transitory in character for the best interests of children. Before the UCCJA, the custom in the states was to take jurisdiction on the presence of the child.[65] Children suffered. The states' own broad interests in the welfare of children suffered. Due process, for children, became a cipher. A rule which relies on "minimum contacts" with the defendant may even be more transitory than presence of the child.

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[63] *International Shoe supra* note 46.

[64] See: NCCUSL, *Uniform Marriage and Divorce Act*, § 310 (1973).

[65] Clark, *Law of Domestic Relations*, 322-23 (1968).

Take the Petitioner's assertion that personal jurisdiction over the Respondent should be based on the single transaction of entering one state to take a child to another state, as an example. If the child had been taken from Petitioner in Louisiana, on the alleged "camping trip," would she then really wish to litigate custody in Louisiana? Yet, that is the result of her "minimum contacts" argument. Against this extreme notion of transitory jurisdiction, the UCCJA stands as a bulwark of stability for the child.

A fair system fixes jurisdiction in one place that is in the best interests of the child. Then it attempts to serve the convenience of the parties as adequately as possible. In order to mitigate problems of inconvenience, the UCCJA provides for taking testimony in other states, for obtaining hearings and the collection of social studies for other states, and for assistance to the courts of other states by orders to give evidence in another state. It allows a state with jurisdiction to decline its exercise if the forum is inconvenient, and to communicate with a second court to transfer a case. The statute limits the transitory character of these cases, and assists out-of-state litigants. But above all else, it protects children.

The Amici Curiae assert that "traditional notions of fair play and substantial justice" are the basis for the UCCJA. The provisions of the UCCJA provide the finest example of "particularized rules" for taking jurisdiction. A bare "minimum contacts" test cannot meet these "traditional notions" as well.

Webb v. *Webb* is not the same situation as found in *Kulko* v. *Super. Ct.*[66] Child support judgments are money judgments. Child custody and the home of the child were not in dispute. The state's own interest in the child's home is even more intense than in support, because the stability of the home is the guarantee of the stability of its citizens. Unlike *Kulko,* the

[66] *Kulko supra* note 47.

state's interests in this case are met through a Uniform Act that focuses the state's interests through the exercise of jurisdiction. The distinction is material.

C. Conclusion.

May v. *Anderson* should be consigned to history. This Court should, also, refrain from applying a minimum contacts requirement which would undo the work done, already, by the exercise of comity in the best interests of children. This Court should recognize that personal jurisdiction over the father was not needed for the Florida litigation. Florida, however, did not have subject matter jurisdiction for the reasons set out earlier in this Brief. Florida should have respected the jurisdiction of Georgia, the child's former home state where significant contact with the child remains.

Respectfully submitted,

JOHN C. DEACON
President, National Conference of Commissioners on Uniform State Laws
P. O. Box 1245
Jonesboro, Arkansas 72401
(501) 932-6694

JOHN M. MCCABE
Legal Counsel, National Conference of Commissioners on Uniform State Laws
645 North Michigan Avenue
Chicago, Illinois 60611
(312) 321-9710

Amici Curiae

APPENDIX

UNIFORM CHILD CUSTODY JURISDICTION ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-SEVENTH YEAR
AT PHILADELPHIA, PENNSYLVANIA
JULY 22-AUGUST 1, 1968

WITH
PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS
MEETING AT PHILADELPHIA, PENNSYLVANIA
August 7, 1968

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Child Custody Jurisdiction Act was as follows:

JOHN W. WADE, Vanderbilt University School of Law, Nashville, Tennessee 37203 *Chairman*

WILLIAM R. BURKETT, Box 588, Woodward, Oklahoma 73801

MARTIN J. DINKELSPIEL, 111 Pine Street, 10th Floor, San Francisco, California 94111

FREDERICK P. O'CONNELL, 341 Water Street, Augusta, Maine 04330

WILLIS E. SULLIVAN, Box 1466, Boise, Idaho 83701

HARRY M. WEAKLEY, Room 324, Capitol Building, Phoenix, Arizona 85007

RICHARD O. WHITE, Legislative Building, Olympia, Washington 98501

EUGENE A. BURDICK, P. O. Box 757, Williston, North Dakota 58801 *Chairman of Section F, Ex-Officio*

BRIGITTE M. BODENHEIMER, University of California School of Law, Davis, California 95616 *Reporter*

Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from

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ON UNIFORM STATE LAWS
1155 East Sixtieth Street
Chicago, Illinois 60637

Uniform Child Custody Jurisdiction Act

Prefatory Note

There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the children may be cared for by grandparents in a third state, and all three parties may fight over the right to keep the children in several states. These and many similar situations constantly arise in our mobile society where family members often are scattered all over the United States and at times over other countries. A young child may have been moved to another state repeatedly before the case goes to court. When a decree has been rendered awarding custody to one of the parties, this is by no means the end of the child's migrations. It is well known that those who lose a court battle over custody are often unwilling to accept the judgment of the court. They will remove the child in an unguarded moment or fail to return him after a visit and will seek their luck in the court of a distant state where they hope to find—and often do find—a more sympathetic ear for their plea for custody. The party deprived of the child may then resort to similar tactics to recover the child and this "game" may continue for years, with the child thrown back and forth from state to state, never coming to rest in one single home and in one community.

The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

This unfortunate state of affairs has been aided and facilitated rather than discouraged by the law. There is no statutory law in this area and the judicial law is so unsettled that it seems to offer nothing but a "quicksand foundation" to stand on. See Leflar, American Conflicts

Law 585 (1968). See also Clark, Domestic Relations 320 (1968). There is no certainty as to which state has jurisdiction when persons seeking custody of a child approach the courts of several states simultaneously or successively. There is no certainty as to whether a custody decree rendered in one state is entitled to recognition and enforcement in another; nor as to when one state may alter a custody decree of a sister state.

The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the child and family was with the particular state, with little regard to any conflict of law rules. See Leflar, American Conflicts Law 585-6 (1968) and Leflar, 1967 Annual Survey of American Law, Conflict of Laws 26 (1968). Also, since the United States Supreme Court has never settled the question whether the full faith and credit clause of the Constitution applies to custody decrees, many states have felt free to modify custody decrees of sister states almost at random although the theory usually is that there has been a change of circumstances requiring a custody award to a different person. Compare *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947); and see Comment, Ford v. Ford: Full Faith and Credit To Child Custody Decrees? 73 Yale L. J. 134 (1963). Generally speaking, there has been a tendency to over-emphasize the need for fluidity and modifiability of custody decrees at the expense of the equal (if not greater) need, from the standpoint of the child, for stability of custody decisions once made. Compare Clark, Domestic Relations 326 (1968).

Under this state of the law the courts of the various states have acted in isolation and at times in competition with each other; often with disastrous consequences. A court of one state may have awarded custody to the mother while another state decreed simultaneously that the child must go to the father. See *Stout v. Pate*, 209 Ga. 786, 75 S.E. 2d 748 (1953) and *Stout v. Pate*, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953), cert. denied in both cases 347 U.S. 968, 74 S. Ct. 744, 776, 98 L. Ed. 1109, 1110 (1954); *Moniz v. Moniz*, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956); and *Sharpe v. Sharpe*, 77 Ill. App. 2d 295, 222 N.E. 2d 340 (1966). In situations like this the litigants do not know which court to obey. They may face punishment for contempt of court and perhaps criminal charges for child stealing in one state when complying with the decree of the other. Also, a custody decree made in one state one year is often overturned in another jurisdiction the next year or some years later and the child is handed over to another family, to be repeated as long as the feud continues. See *Com. ex rel. Thomas v. Gillard*, 203 Pa. Super. 95, 198 A 2d 377 (1964); *In Re Guardianship of Rodgers*, 100 Ariz. 269, 413 P. 2d 774 (1966); *Berlin v. Berlin*, 239 Md. 52, 210 A. 2d 380 (1965); *Berlin v. Berlin*, 21 N.Y. 2d 371, 235 N.E.

2d 109 (1967), cert. denied 37 L.W. 3123 (1968); and *Batchelor v. Fulcher*, 415 S.W. 2d 828 (Ky. 1967).

In this confused legal situation the person who has possession of the child has an enormous tactical advantage. Physical presence of the child opens the doors of many courts to the petitions and often assures him of a decision in his favor. It is not surprising then that custody claimants tend to take the law into their own hands, that they resort to self-help in the form of child stealing, kidnapping, or various other schemes to gain possession of the child. The irony is that persons who are good, law-abiding citizens are often driven into these tactics against their inclinations; and that lawyers who are reluctant to advise the use of maneuver of doubtful legality may place their clients at a decided disadvantage.

To remedy this intolerable state of affairs where self-help and the rule of "seize-and-run" prevail rather than the orderly processes of the law, uniform legislation has been urged in recent years to bring about a fair measure of interstate stability in custody awards. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795 (1964); Ratner, Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183 (1965); and Ehrenzweig, The Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings, 64 Mich. L. Rev. 1 (1965). In drafting this Act, the National Conference of Commissioners has drawn heavily on the work of these authors and has consulted with other leading authorities in the field. The American Bar Association has taken an active part in furthering the project.

The Act is designed to bring some semblence of order into the existing chaos. It limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family. See Section 3. It provides for the recognition and enforcement of out-of-state custody decrees in many instances. See Sections 13 and 15. Jurisdiction to modify decrees of other states is limited by giving a jurisdictional preference to the prior court under certain conditions. See Section 14. Access to a court may be denied to petitioners who have engaged in child snatching or similar practices. See Section 8. Also, the Act opens up direct lines of communication between courts of different states to prevent jurisdictional conflict and bring about interstate judicial assistance in custody cases.

The Act stresses the importance of the personal appearance before the court of non-residents who claim custody, and of the child himself, and provides for the payment of travel expenses for this purpose. See Section 11. Further provisions insure that the judge receives necessary out-of-state information with the assistance of courts in other states. See Sections 17 through 22.

Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important *which* court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future.

The Act is not a reciprocal law. It can be put into full operation by each individual state regardless of enactment of other states. But its full benefits will not be reaped until a large number of states have enacted it, and until the courts, perhaps aided by regional or national conferences, have come to develop a new, truly "inter-state" approach to child custody litigation. The general policies of the Act and some of its specific provisions apply to international custody cases.

SECTION 1. [*Purposes of Act; Contruction of Provisions.*]

(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

COMMENT

Because this uniform law breaks new ground not previously covered by legislation, its purposes are stated in some detail. Each section must be read and applied with these purposes in mind.

SECTION 2. [*Definitions.*] As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonweath of Puerto Rico, and the District of Columbia.

COMMENT

Subsection (3) indicates that "custody proceeding" is to be understood in a broad sense. The term covers habeas corpus actions, guardianship petitions, and other proceedings available under general state law to determine custody. See Clark, Domestic Relations 576-582 (1968).

Other definitions are explained, if necessary, in the comments to the sections which use the terms defined.

SECTION 3. [*Jurisdiction.*]

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

COMMENT

Paragraphs (1) and (2) of subsection (a) establish the two major bases for jurisdiction. In the first place, a court in the child's home state has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction. If this alternative test produces concurrent jurisdiction in more than one state, the mechanisms provided in sections 6 and 7 are used to assure that only one state makes the custody decision.

"Home state" is defined in section 2(5). A 6-month period has been selected in order to have a definite and certain test which is at the same time based on a

reasonable assumption of fact. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 818 (1964) who explains:

> "Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home."

Subparagraph (ii) of paragraph (1) extends the home state rule for an additional six-month period in order to permit suit in the home state after the child's departure. The main objective is to protect a parent who has been left by his spouse taking the child along. The provision makes clear that the stay-at-home parent, if he acts promptly, may start proceedings in his own state if he desires, without the necessity of attempting to base jurisdiction on paragraph (2). This changes the law in those states which required presence of the child as a condition for jurisdiction and consequently forced the person left behind to follow the departed person to another state, perhaps to several states in succession. See also subsection (c).

Paragraph (2) comes into play either when the home state test cannot be met or as an alternative to that test. The first situation arises, for example, when a family has moved frequently and there is no state where the child has lived for 6 months prior to suit, or if the child has recently been removed from his home state and the person who was left behind has also moved away. See paragraph (1), last clause. A typical example of alternative jurisdiction is the case in which the stay-at-home parent chooses to follow the departed spouse to state 2 (where the child has lived for several months with the other parent) and starts proceedings there. Whether the departed parent also has access to a court in state 2, depends on the strength of the family ties in that state and on the applicability of the clean hands provision of section 8. If state 2, for example, was the state of the matrimonial home where the entire family lived for two years before moving to the "home state" for 6 months, and the wife returned to state 2 with the child with the consent of the husband, state 2 might well have jurisdiction upon petition of the wife. The same may be true if the wife returned to her parents in her former home state where the child had spent several months every year before. Compare Willmore v. Willmore, 273, Minn. 537, 143 N.W. 2d 630 (1966), cert. denied 385 U.S. 898 (1966). While jurisdiction may exist in two states in these instances, it will not be *exercised* in both states. See sections 6 and 7.

Paragraph (2) of subsection (a) is supplemented by subsection (b) which is designed to discourage unilateral removal of children to other states and to guard generally against too liberal an interpretation of paragraph (2). Short-term presence in the state is not enough even though there may be an intent to stay longer, perhaps an intent to establish a technical "domicile" for divorce or other purposes.

Paragraph (2) perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1. The paragraph was phrased in general terms in order to be flexible enough to cover many fact situations too diverse to lend themselves to exact description. But its purpose is to limit jurisdiction rather than to proliferate it. The first clause of the paragraph is important: jurisdiction exists only if it is in the *child's* interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state. The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction. See Clark, Domestic Relations 578 (1968).

Paragraph (3) of subsection (a) retains and reaffirms *parens patriae* jurisdiction, usually exercised by a juvenile court, which a state must assume when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the state is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

Paragraph (4) of subsection (a) provides a final basis for jurisdiction which is subsidiary in nature. It is to be resorted to only if no other state could, or would, assume jurisdiction under the other criteria of this section.

Subsection (c) makes it clear that presence of the child is not a jurisdictional requirement. Subseqent sections are designed to assure the appearance of the child before the court.

This section governs jurisdiction to make an initial decree as well as a modification decree. Both terms are defined in section 2. Jurisdiction to modify an initial or modification decree of another state is subject to additional restrictions contained in sections 8(b) and 14(a).

SECTION 4. [*Notice and Opportunity to be Heard.*] Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to section 5.

COMMENT

This section lists the persons who must be notified and given an opportunity to be heard to satisfy due process requirements. As to persons in the forum state, the general law of the state applies; others are notified in accordance with section 5. Strict compliance with sections 4 and 5 is essential for the validity of a custody decree within the state and its recognition and enforcement in other states under sections 12, 13, and 15. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft sec. 69 (1967); and compare Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

SECTION 5. [*Notice to Persons Outside this State; Submission to Jurisdiction.*]

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service of process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the court [including publication, if other means of notification are ineffective].

(b) Notice under this section shall be served, mailed, or delivered, [or last published] at least [10, 20] days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

COMMENT

Section 2.01 of the Uniform Interstate and International Procedure Act has been followed to a large extent. See 9B U.L.A. 315 (1966). If at all possible, actual notice should be received by the affected persons; but efforts to impart notice in a manner reasonably calculated to give actual notice are sufficient when a person who may perhaps conceal his whereabouts, cannot be reached. See Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950) and Schroeder v. City of New York, 371 U.S. 208, 83 S. Ct. 279, 9 L. Ed. 2d 255 (1962).

Notice by publication in lieu of other means of notification is not included because of its doubtful constitutionality. See Mullane v. Central Hanover Bank and Trust Co., *supra;* and see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Rev. 241, 277, 286-87. Paragraph (4) of subsection (a) lists notice by publication in brackets for the benefit of those states which desire to use published notices *in addition to* the modes of notification provided in this section when these modes prove ineffective to impart actual notice.

The provisions of this section, and paragraphs (2) and (4) of subsection (a) in particular, are subject to the caveat that notice and opportunity to be heard must always meet due process requirements as they exist at the time of the proceeding.

SECTION 6. [*Simultaneous Proceedings in Other States.*]

(a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry

established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

COMMENT

Because of the havoc wreaked by simultaneous and competitive jurisdiction which has been described in the Prefatory Note, this section seeks to avoid jurisdictional conflict with all feasible means, including novel methods. Courts are expected to take an active part under this section in seeking out information about custody proceedings concerning the same child pending in other states. In a proper case jurisdiction is yielded to the other state either under this section or under section 7. Both sections must be read together.

When the courts of more than one state have jurisdiction under sections 3 or 14, priority in time determines which court will proceed with the action, but the application of the inconvenient forum principle of section 7 may result in the handling of the case by the other court.

While jurisdiction need not be yielded under subsection (a) if the other court would not have jurisdiction under the criteria of this Act, the policy against simultaneous custody proceedings is so strong that it might in a particular situation be appropriate to leave the case to the other court even under such circumstances. See subsection (3) and section 7.

Once a custody decree has been rendered in one state, jurisdiction is determined by sections 8 and 14.

SECTION 7. [*Inconvenient Forum.*]

(a) A court which has jurisdiction under this Act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the

court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1.

(d) Before determing whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this State, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, of if the court which would have jurisdiction in the other state is not certainly known, shall transmit the informa-

tion to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.

COMMENT

The purpose of this provision is to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. It serves as a second check on jurisdiction once the test of sections 3 or 14 has been met.

The section is a particular application of the inconvenient forum principle, recognized in most states by judicial law, adapted to the special needs of child custody cases. The terminology used follows section 84 of the Restatement of the Law Second, Conflict of Laws, Proposed Official Draft (1967). Judicial restrictions or exceptions to the inconvenient forum rule made in some states do not apply to this statutory scheme which is limited to child custody cases.

Like section 6, this section stresses interstate judicial communication and cooperation. When there is doubt as to which is the more appropriate forum, the question may be resolved by consultation and cooperation among the courts involved.

Paragraphs (1) through (5) of subsection (c) specify some, but not all, considerations which enter into a court determination of inconvenient forum. Factors customarily listed for purposes of the general principle of the inconvenient forum (such as convenience of the parties and hardship to the defendant) are also pertinent, but may under the circumstances be of secondary importance because the child who is not a party is the central figure in the proceedings.

Part of subsection (e) is derived from Wis. Stat. Ann., sec. 262.19 (1).

Subsection (f) makes it clear that a court may divide a case, that is, dismiss part of it and retain the rest. See section 1.05 of the Uniform Interstate and International Procedure Act. When the custody issue comes up in a divorce proceeding, courts may have frequent occasion to decline jurisdiction as to that issue (assuming that custody jurisdiction exists under sections 3 or 14).

Subsection (g) is an adaptation of Wis. Stat. Ann., sec. 262.20 Its purpose is to serve as a deterrent against "frivolous jurisdiction claims," as G.W. Foster states in the Revision Notes to the Wisconsin provision. It applies when the forum chosen is seriously inappropriate considering the jurisdictional requirements of the Act.

SECTION 8. [*Jurisdiction Declined by Reason of Conduct.*]

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to

custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

COMMENT

This section incorporates the "clean hands doctrine," so named by Ehrenzweig, Interstate Recognition of Custody Decrees, 51 Mich. L. Rev. 345 (1953). Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree. See Fain, Custody of Children, The California Family Lawyer I, 539, 546 (1961); Ex Parte Mullins, 26 Wash. 2d 419, 174 P. 2d 790 (1946); Crocker v. Crocker, 122 Colo. 49, 219 P. 2d 311 (1950); and Leathers v. Leathers, 162 Cal. App. 2d 768, 328 P. 2d 853 (1958). But when adherence to this rule would lead to punishment of the parent at the expense of the wellbeing of the child, it is often not applied. See Smith v. Smith, 135 Cal. App. 2d 100, 286 P. 2d 1009 (1955) and In re Guardianship of Rodgers, 100 Ariz. 269, 413 P. 2d 744 (1966).

Subsection (a) extends the clean hands principle to cases in which a custody decree has not yet been rendered in any state. For example, if upon a de facto separation the wife returned to her own home with the children without objection by her husband and lived there for two years without hearing from him, and the husband without warning forcibly removes the children one night and brings them to another state, a court in that state although it has jurisdiction after 6 months may decline to hear the huband's custody petition. "Wrongfully" taking under this subsection does not mean that a "right" has been violated-both husband and wife as a rule have a right to custody until a court determination is made-but that one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction.

Subsection (b) does not come into operation unless the court has power under section 14 to modify the custody decree of another state. It is a codification of the clean hands rule, except that it differentiates between (1) a taking or retention of the child and (2) other violations of custody decrees. In the case of illegal removal or retention refusal of jursdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct. Compare Smith v. Smith and In Re Guardianship of Rodgers, *supra;* and see In Re Walter, 228 Cal. App. 2d 217, 39 Cal. Rpts. 243 (1964) where the court assumed jurisdiction after both parents had been guilty of misconduct. The qualifying word "improperly" is added to exclude cases in which a child is withheld because of illness or other emergency or in which there are other special justifying circumstances.

The most common violation of the second category is the removal of the child from the state by the parent who has the right to custody, thereby frustrating the exercise of visitation rights of the other parent. The second sentence of subsection

(b) makes refusal of jurisdiction entirely discretionary in this situation because it depends on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction.

Subsection (c) adds a financial deterrent to child stealing and similar reprehensible conduct.

SECTION 9. [*Information under Oath to be Submitted to the Court.*]

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

COMMENT

It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted under various provisions of the Act. Information as to custody litigation and other pertinent facts occurring in other countries may also be elicited under this section in combination with section 23.

SECTION 10. [*Additional Parties.*] If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or

visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this State he shall be served with process or otherwise notified in accordance with section 5.

COMMENT

The purpose of this section is to prevent re-litigations of the custody issue when these would be for the benefit of third claimants rather than the child. If the immediate controversy, for example, is between the parents, but relatives inside or outside the state also claim custody or have physical custody which may lead to a future claim to the child, they must be brought into the proceedings. The courts are given an active role here as under other sections of the Act to seek out the necessary information from formal or informal sources.

SECTION 11. [*Appearance of Parties and the Child.*]

[(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.]

(b) If a party to the proceeding whose presence is desired by the court is outside this State with or without the child the court may order that the notice given under section 5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

COMMENT

Since a custody proceeding is concerned with the past and future care of the child by one of the parties, it is of vital importance in most cases that the judge has an opportunity to see and hear the contestants and the child. Subsection (a) authorises the court to order the appearance of these persons if they are in the state. It is placed in brackets because states which have such a provision—not only in their juvenile court laws—may wish to omit it. Subsection (b) relates to the appearance of persons who are outside the state and provides one method of bringing them before the court; sections 19(b) and 20(b) provide another. Subsection (c) helps to finance travel to the court which may be close to one of the parties and distant from another; it may be used to equalise the expense if this is appropriate under the circumstances.

SECTION 12. [*Binding Force and Res Judicata Effect of Custody Decree.*] A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

COMMENT

This section deals with the intra-state validity of custody decrees which provides the basis for their interstate recognition and enforcement. The two prerequisites are (1) jurisdiction under section 3 of this Act and (2) strict compliance with due process mandates of notice and opportunity to be heard. There is no requirement for technical personal jurisdiction, on the traditional theory that custody determinations, as distinguished from support actions (see section 2(2) *supra*), are proceedings in rem or proceedings affecting status. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 69 and 79 (1967); and James, Civil Procedure 613 (1965). For a different theory reaching the same result, see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Review 241. The section is not at variance with May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953), which relates to interstate recognition rather than in-state validity of custody decrees. See Ehrenzweig and Louisell, Jurisdiction in a Nutshell 76 (2d ed. 1968); and compare Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183, 195 (1957). On May v. Anderson, *supra*, see comment to section 13.

Since a custody decree is nomally subject to modification in the interest of the child, it does not have absolute finality, but as long as it has not been modified, it is as binding as a final judgment. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967).

SECTION 13. [*Recognition of Out-of-State Custody Decrees.*] The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

COMMENT

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1, and see Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 828 (1964).

Although the full faith and credit clause may perhaps not require the recognition of out-of-state custody decrees, the states are free to recognise and enforce them. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967), and see the Prefatory Note, *supra*. This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced. Recognition and enforcement is mandatory if the state in which the prior decree was rendered 1) has adopted this Act, 2) has statutory jurisdictional requirements substantially like this Act, or 3) would have had jurisdiction under the facts of the case if this Act had been the law in the state. Compare Comment, Ford v. Ford: Full Faith and Credit to Child Custody Decrees? 73 Yale L.J. 134, 148 (1963).

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance. For the recognition of custody decrees of other nations, see section 23.

Recognition is accorded to a decree which is valid and binding under section 12. This means, for example, that a court in the state where the father resides will recognise and enforce a custody decree rendered in the home state where the child lives with the mother if the father was duly notified and given enough time to appear in the proceedings. Personal jurisdiction over the father is not required. See comment to section 12. This is in accord with a common interpretation of the inconclusive decision in May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953). See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 79 and comment thereto, p. 298 (1967). Under this interpretation a state is permitted to recognize a custody decree of another state regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met. See Justice Frankfurter's concurring opinion in May v. Anderson; and compare Clark, Domestic Relations 323-26 (1968), Goodrich, Conflict of Laws 274 (4th ed. by Scoles, 1964); Stumberg, Principles of Conflict of Laws 325 (3rd ed. 1963); and Comment, The Puzzle of Jurisdiction in Child Custody Actions, 38 U. Colo. L. Rev. 541 (1966). The Act emphasizes the need for the personal appearance of the contestants rather than any technical requirement for personal jurisdiction.

The mandate of this section could cause problems if the prior decree is a punitive or disciplinary measure. See Ehrenzweig, Inter-state Recognition of Custody Decrees, 51 Mich. L. Rev. 345, 370 (1953). If, for example, a court grants custody to the mother and after 5 years' of continuous life with the mother the child is awarded to the father by the same court for the sole reason that the mother who had moved to another state upon remarriage had not lived up to the visitation requirements of the decree, courts in other states may be reluctant to recognize the changed decree. See Berlin v. Berlin, 21 N.Y. 2d 371, 235 N.E. 2d 109 (1967), and Stout v. Pate, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953); Compare Moniz v. Moniz, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956). Disciplinary decrees of this type can be avoided under this Act by enforcing the visitation provisions of the decree directly in another state. See Section 15. If the original plan for visitation does not fit the new conditions, a petition for modification of the visiting arrangements would be filed in a court which has jurisdiction, that is, in many cases the original court. See section 14.

SECTION 14. [*Modification of Custody Decree of Another State.*]

(a) If a court of another state has made a custody decree, a

court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

(b) If a court of this State is authorized under subsection (a) and section 8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22.

COMMENT

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. See People ex rel. Halvey v. Halvey, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947). In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere. Compare Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 821-2(1964).

For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6-1/2 months (3-1/2 months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree despite the fact that state 2 has in the meantime become the "home state" of the child. If, however, the father also moved away from state 1, that state loses modification jurisdiction interstate, whether or not its jurisdiction continues under local law. See Clark, Domestic Relations 322-23 (1968). Also, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease. Compare Brengle v. Hurst, 408 S. W. 2d 418 (Ky. 1966). The situation would be different if the children had been abducted and their whereabouts could not be discovered by the legal custodian for several years. The abductor would be denied access to the court of another state under section 8(b) and state 1 would have modification jurisdiction in any event under section 3(a) (4). Compare Crocker v. Crocker, 122 Colo. 49, 219 P. 2d 311 (1950).

The prior court has jurisdiction to modify under this section even though its original assumption of jurisdiction did not meet the standards of this Act, as long as it would have jurisdiction *now*, that is, at the time of the petition for modification.

If the state of the prior decree declines to assume jurisdiction to modify the

decree, another state with jurisdiction under section 3 can proceed with the case. That is not so if the prior court dismissed the petition on its merits.

Respect for the continuing jurisdiction of another state under this section will serve the purposes of this Act only if the prior court will assume a corresponding obligation to make no changes in the existing custody arrangement which are not required for the good of the child. If the court overturns its own decree in order to discipline a mother or father, with whom the child had lived for years, for failure to comply with an order of the court, the objective of greater stability of custody decrees is not achieved. See Comment to section 13 last paragraph, and cases there cited. See also Sharpe v. Sharpe, 77 Ill. App. 295, 222 N.E. 2d 340 (1966). Under section 15 of this Act an order of a court contained in a custody decree can be directly enforced in another state.

Under subsection (b) transcipts of prior proceedings if received under section 22 are to be considered by the modifying court. The purpose is to give the judge the opportunity to be as fully informed as possible before making a custody decision. "One court will seldom have so much of the story that another's inquiry is unimportant" says Paulsen, Appointment of a Guardian in the Conflict of Laws, 45 Iowa L. Rev. 212, 226 (1960). See also Ehrensweig, the Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings, 64 Mich. L. Rev. 1, 6-7 (1965); and Ratner, Legislative Resolution of the Interstate Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183, 202 (1965). How much consideration is "due" this transcript, whether or under what conditions it is received in evidence, are matters of local, internal law which are not affected by this interstate act.

SECTION 15. [*Filing and Enforcement of Custody Decree of Another State.*]

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any [District Court, Family Court] of this State. The clerk shall treat the decree in the same manner as a custody decree of the [District Court, Family Court] of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

COMMENT

Out-of-state custody decrees which are required to be recognized are enforced by other states. See section 13. Subsection (a) provides a simplified and speedy method of enforcement. It is derived from section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964, 9A U.L.A. 486 (1965). A certified copy of the decree is filed in the appropriate court, and the decree thereupon becomes in effect a decree of the state of filing and is enforceable by any method of enforcement available under the law of that state.

The authority to enforce an out-of-state decree does not include the power to

modify it. If modification is desired, the petition must be directed to the court which has jurisdiction to modify under section 14. This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 832-33 (1964).

The right to custody for periods of visitation and other provisions of a custody decree are enforceable in other states in the same manner as the primary right to custody. If visitation privileges provided in the decree have become impractical upon moving to another state, the remedy against automatic enforcement in another state is a petition in the proper court to modify visitation arrangements to fit the new conditions.

Subsection (b) makes it clear that the financial burden of enforcement of a custody decree may be shifted to the wrongdoer. Compare 2 Armstrong, California Family Law 328 (1966 Suppl.), and *Crocker v. Crocker*, 195 F. 2d 236 (1952).

SECTION 16. [*Registry of Out-of-State Custody Decrees and Proceedings.*] The clerk of each [District Court, Family Court] shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

COMMENT

The purpose of this section is to gather all information concerning out-of-state custody cases which reaches a court in one designated place. The term "registry" is derived from section 35 of the Uniform Reciprocal Enforcement of Support Act of 1958, 9C U.L.A. 61 (1967 Suppl.) Another term may be used if desired without affecting the uniformity of the Act. The information in the registry is usually incomplete since it contains only those documents which have been specifically requested or which have otherwise found their way to the state. It is therefore necessary in most cases for the court to seek additional information elsewhere.

SECTION 17. [*Certified Copies of Custody Decree.*] The Clerk of the [District Court, Family Court] of this State, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

SECTION 18. [*Taking Testimony in Another State.*] In addition to other procedural devices available to a party, any party to the

proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

COMMENT

Sections 18 to 22 are derived from sections 3.01 and 3.02 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321, 326 (1966); from ideas underlying the Uniform Reciprocal Enforcement of Support Act; and from Ehrenzweig, the Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings, 64 Mich. L. Rev. 1 (1965). They are designed to fill the partial vacuum which inevitably exists in cases involving an "interstate child" since part of the essential information about the child and his relationship to other persons is always in another state. Even though jurisdiction is assumed under sections 3 and 7 in the state where much (or most) of the pertinent facts are readily available, some important evidence will unavoidably be elsewhere.

Section 18 is derived from portions of section 3.01 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321. The first sentence relates to depositions, written interrogatories and other discovery devices which may be used by parties or representatives of the child. The procedural rules of the state where the device is used are applicable under this sentence. The second sentence empowers the court itself to initiate the gathering of out-of-state evidence which is often not supplied by the parties in order to give the court a complete picture of the child's situation, especially as it relates to a custody claimant who lives in another state.

SECTION 19. [*Hearings and Studies in Another State; Orders to Appear.*]

(a) A court of this State may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this State; and to forward to the court of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the [County, State].

(b) A court of this State may request the appropriate court of another state to order a party to custody proceedings pending in the court of this State to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

COMMENT

Section 19 relates to assistance sought by a court of the forum state from a court of another state. See comment to section 18. Subsection (a) covers any kind of evidentiary procedure available under the law of the assisting state which may aid the court in the requesting state, including custody investigations (social studies) if authorized by the law of the other state. Under what conditions reports of social studies and other evidence collected under this subsection are admissible in the requesting state, is a matter of internal state law not covered in this interstate statute. Subsection (b) serves to bring parties and the child before the requesting court, backed up by the assisting court's contempt powers. See section 11.

SECTION 20 [*Assistance to Courts of Other States.*]

(a) Upon request of the court of another state the courts of this State which are competent to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State [or may order social studies to be made for use in a custody proceeding in another state]. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced [and any social studies prepared] shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this State may voluntarily give his testimony or statement in this State for use in a custody proceeding outside this state.

(c) Upon request of the court of another state a competent court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

COMMENT

Section 20 is the counterpart of section 19. It empowers local courts to give help to out-of-state courts in custody cases. See comments to sections 18 and 19. The references to social studies have been placed in brackets so that states without authorization to make social studies outside of juvenile court proceedings may omit them if they wish. Subsection (b) reaffirms the existing freedom of persons within the United States to give evidence for use in proceedings elsewhere. It is derived from section 3.02 (b) of the Interstate and International Procedure Act, 9B U.L.A. 327 (1966).

SECTION 21. [*Preservation of Documents for Use in Other States.*] In any custody proceeding in this State the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents

until the child reaches [18, 21] years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

COMMENT

See comments to sections 18 and 19. Documents are to be preserved until the child is old enough that further custody disputes are unlikely. A lower figure than the ones suggested in the brackets may be inserted.

SECTION 22. [*Request for Court Records of Another State.*] If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this State, the court of this State upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21.

COMMENT

This is the counterpart of section 21. See comments to sections 18, 19, and 14(b).

SECTION 23. [*International Application.*] The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees inolving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

COMMENT

Not all the provisions of the Act lend themselves to direct application in international custody disputes; but the basic policies of avoiding jurisdictional conflict and multiple litigation are as strong if not stronger when children are moved back and forth from one country to another by feuding relatives. Compare Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959) and Swindle v. Bradley, 240 Ark. 903, 403 S.W. 2d 63 (1966).

The first sentence makes the general policies of the Act applicable to international cases. This means that the substance of section 1 and the principles underlying provisions like sections 6, 7, 8, and 14(a), are to be followed when some of the persons involved are in a foreign country or a foreign custody proceeding is pending.

The second sentence declares that custody decrees rendered in other nations by appropriate authorities (which may be judicial or administrative tribunals) are recognised and enforced in this country. The only prerequisite is that reasonable notice and opportunity to be heard was given to the persons affected. It is also to be understood that the foreign tribunal had jurisdiction under its own law rather than under section 3 of this Act. Compare Restatement of the Law Second, Con-

flict of Laws, Proposed Official Draft, sections 10, 92, 98, and 109(2) (1967). Compare also Goodrich, Conflict of Laws 390-93 (4th ed., Scoles, 1964).

[SECTION 24. [*Priority.*] Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act the case shall be given calendar priority and handled expeditiously.]

COMMENT

Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act. Since some states may have or wish to adopt a statutory provision or court rule of wider scope, this section is placed in brackets and may be omitted.

SECTION 25. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 26. [*Short Title.*] This Act may be cited as the Uniform Child Custody Jurisdiction Act.

SECTION 27. [*Repeal.*] The following acts and parts of acts are repealed:

(1)

(2)

(3)

SECTION 28. [*Time of Taking Effect.*] This Act shall take effect. . . . .